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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,762	02/08/2001	Marcio Marc Abreu	P66081US1	4160
136	7590	06/13/2006	EXAMINER	
JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004			NAJARIAN, LENA	
		ART UNIT	PAPER NUMBER	
			3626	

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/778,762	ABREU, MARCIO MARC
Examiner	Art Unit	
Lena Najarian	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 18 April 2006.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-79 is/are pending in the application.

4a) Of the above claim(s) 1-65 and 74-76 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 66-73 and 77-79 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Notice to Applicant***

1. This communication is in response to the amendment filed 4/18/06. Claims 1-79 remain pending. Claims 1-65 and 74-76 are withdrawn from consideration. Claims 66, 67, 70, 71, and 77 have been amended.

***Oath/Declaration***

2. The objection to the oath/declaration is hereby withdrawn due to the response filed 4/18/06.

***Drawings***

3. The objection to the drawings is hereby withdrawn due to the amendment filed 4/18/06.

***Specification***

4. The objection to the abstract is hereby withdrawn due to the amendment filed 4/18/06.

***Claim Objections***

5. The objection to claim 67 is hereby withdrawn due to the amendment filed 4/18/06.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 66-71 and 77-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suliman, JR et al. (US 2001/0053980 A1) in view of Schrier et al. (5,833,599).

(A) Claim 66 has been amended to now recite "a product having a product identification and a biological variable" as opposed to the previously recited "product identification and biometric data."

However, the change does not affect the scope and breadth of the claim as originally presented and/or in the manner in which the claim was interpreted by the Examiner when applying prior art within the previous Office Action. As such, the limitations above are rejected under the same rationale given in the previous Office Action, and incorporated herein.

Claim 66 has been amended to also now recite "said interaction including at least one of a product-to-product interaction and a biological variable-to-product interaction."

Suliman does not disclose at least one of a product-to-product interaction and a biological variable-to-product interaction.

Schrier discloses a product-to-product interaction (see col. 11, line 48 – col. 12, line 37 of Schrier).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Schrier within Suliman. The

motivation for doing so would have been to prevent adverse reactions from occurring (col. 8, lines 4-8 of Schrier).

Insofar as the claim recites “at least one of,” it is immaterial whether or not the other elements are also disclosed.

The remainder of claim 66 is rejected for the same reasons given in the prior Office Action, and incorporated herein.

(B) Claim 67 has been amended to overcome the claim objection set forth in the previous Office Action. However, the change does not affect the scope and breadth of the claim as originally presented and/or in the manner in which the claim was interpreted by the Examiner when applying prior art within the previous Office Action. As such, this claim is rejected under the same rationale given in the prior Office Action, and incorporated herein.

(C) Claims 68 and 69 have not been amended and are rejected for the same reasons given in the previous Office Action, and incorporated herein.

(D) Claim 70 has been amended to now recite a system to “offer alternative products to a user,” “an alternative product program,” and “a central server, said central server adapted to transmit information to said user and an alternative product to a harmful or recalled product.”

Suliman discloses a central server adapted to transmit information to said user (para. 29 of Suliman).

Suliman does not disclose offering alternative products to a harmful product to a user.

Schrier discloses offering alternative products to a harmful product to a user (col. 1, line 58 – col. 2, line 9 of Schrier).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Schrier within Suliman. The motivation for doing so would have been to provide an option that would not have an adverse reaction (col. 8, lines 4-8 of Schrier).

The remainder of claim 70 is rejected for the same reasons given in the prior Office Action, and incorporated herein.

(E) Claim 71 has been amended to now recite “an alternative product program” and “a central server adapted to transmit information to said user about an alternative product to a harmful or recalled product.”

Suliman discloses a central server adapted to transmit information to said user (para. 29 of Suliman).

Suliman does not disclose an alternative product program.

Schrier discloses an alternative product program (col. 1, line 58 – col. 2, line 9 of Schrier).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Schrier within Suliman. The motivation for doing so would have been to provide an option that would not have an adverse reaction (col. 8, lines 4-8 of Schrier).

The remainder of claim 71 is rejected for the same reasons given in the prior Office Action, and incorporated herein.

(F) Referring to claim 77, Suliman discloses an apparatus comprising:

a hand-held device for entering and storing product information data and consumer identifiers; a data entering device for entry of data into said hand-held device; a processor for identifying an interaction; and a display device (Fig. 3, para. 12, para. 13, para. 38, and para. 39 of Suliman).

Suliman does not disclose biological variables and at least one of a product-to-product interaction and a biological variable-to-product interaction.

Schrier discloses biological variables and product-to-product interaction (see col. 11, line 48 – col. 12, line 37 of Schrier).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Schrier within Suliman. The motivation for doing so would have been to prevent adverse reactions from occurring (col. 8, lines 4-8 of Schrier).

Insofar as the claim recites “at least one of,” it is immaterial whether or not the other elements are also disclosed.

(G) Claims 78 and 79 have not been amended and are rejected for the same reasons given in the previous Office Action, and incorporated herein.

8. Claims 72 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suliman, JR et al. (US 2001/0053980 A1) in view of Schrier et al. (5,833,599), and further in view of Ware (4,707,592).

(A) Claims 72 and 73 have not been amended and are rejected for the same reasons given in the previous Office Action, and incorporated herein.

***Response to Arguments***

9. Applicant's arguments with respect to claims 66, 70, 71, and 77 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied prior art teaches a prescription management system (5,845,255).

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is 571-272-7072. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Ln*  
In  
6-9-06

*Joseph Thomas*  
JOSEPH THOMAS  
SUPERVISORY PATENT EXAMINER